



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,666	06/01/2000	Van L. Phillips	FLEXFT.182A	5980

20995 7590 09/29/2003

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

SNOW, BRUCE EDWARD

ART UNIT	PAPER NUMBER
----------	--------------

3738

DATE MAILED: 09/29/2003

25

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/586,666

Applicant(s)

PHILLIPS, VAN L.

Examiner

Bruce E Snow

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-47 is/are allowed.
- 6) ☐ Claim(s) 11-29 and 31 is/are rejected.
- 7) ☒ Claim(s) 30 and 32-34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3738

DETAILED ACTION

Oath/Declaration

Response to Amendment

The Attribution Declaration under 37 CFR 1.132 filed 6/23/03 is sufficient to overcome the rejection of claims 11-47 based upon the Footnotes, Flex-Foot Brochure rejection and the K2 Sensation rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 11-15, 18-23, 25-29, and 31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Phillips (5,776,205).

Art Unit: 3738

Phillips teaches a prosthetic foot comprising a foot plate 26, 28 comprising a plurality of symmetrically arranged toes. Note "symmetrically arranged toes" does not mean the toes are geometrically the same. The foot further comprising an ankle plate including element 34; and a compressible block including element 50.

Regarding a strap, see element 54.

All other element not specifically identified are believed to be self-evident.

Claims 11-15, 19-21, 23-29, and 31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Robinson et al (5,258,038).

Robinson et al teaches a prosthetic foot comprising a foot plate including elements 14, 16 comprising a plurality of symmetrically arranged toes; an ankle plate including element 12; and a compressible block including elements 24, 26, 28.

Regarding claims 23-24, see element 26.

All other element not specifically identified are believed to be self-evident.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-17, 19-23, 25-29, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips (~~5,900,569~~) in view of Masinter (4,938,776).

Art Unit: 3738

Referring to all embodiments, specifically figure 5, Phillips teaches a prosthetic foot comprising a foot plate 110; an ankle plate including element 112; a compressible block including element 114; and strap 16. However, Phillips is silent regarding the foot plate having symmetrically arranged spaced elongated toes. (Again, "symmetrically arranged toes" does not mean the toes are geometrically the same.) Masinter teaches a prosthetic foot having a foot plate with individual toes formed by slots 63. It would have been obvious to one having ordinary skill in the art to have utilized the slots 63 of Masinter on the foot plate of Phillips "to create individually flexing subportions which will act to follow the manner of toes on a human foot. See Masinter 3:21 et seq.

The footplate of Phillips has a curved outer edge in the toe portion, and therefore, the outer toes would be slightly curved inward (claim 17).

Allowable Subject Matter

Claims 35-47 are allowed.

Claims 30 and 32-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Note applicant cited Poggi et al (4,645,509) having symmetric toes shown in figure 7.

Art Unit: 3738

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (703) 308-3255. The examiner can normally be reached on Mon-Thurs:

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703)308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

bes
September 24, 2003

BRUCE SNOW
PRIMARY EXAMINER